

Neutral Citation No. - 2023:AHC-LKO:78755

Court No. - 14

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 5304 of 2023

Applicant :- Vishvendra Kumar Singh

Opposite Party :- State Of U.P. Thru. Secy. Home Lko.

Counsel for Applicant :- Vikas Vikram Singh, Naved Ali

Counsel for Opposite Party :- G.A., Abhishek Awasthi, Abhishek Awasthi

Hon'ble Mohd. Faiz Alam Khan, J.

1. Rejoinder affidavit filed today by learned counsel for the applicant is taken on record.
2. Heard Shri Naved Ali, learned counsel for the applicant, Shri Abhishek Awasthi, learned counsel appearing for the complainant/informant as well as Shri Rishikesh Verma, learned A.G.A. for the State and perused the record.
3. This bail application has been moved by the accused/applicant- **Vishvendra Kumar Singh** for grant of bail, in Case Crime No. 130 of 2022, under Sections 498-A, 304-B I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Jankipuram, District Lucknow, during trial.
4. Learned counsel for the accused-applicant while pressing the bail application submits that it is a case of false implication. Applicant is the husband of the deceased, who has died after three years of her marriage with the applicant by committing suicide as she was not able to make balance between her official duties and her duties towards her son, who was differently abled.
5. It is further submitted that the deceased was an educated lady and was working in C.D.R.I., Lucknow, however, after few years of her marriage with the applicant she had gone in acute depression and appears to have committed suicide by hanging herself.

6. While drawing the attention of this Court towards the postmortem report, wherein a 'ligature mark' is found around the neck of the deceased along with a contusion on her and a contusion just above left ear and the cause of death has been ascertained as 'asphyxia', as a result of 'antemortem strangulation', it is vehemently submitted that the doctor who has conducted the postmortem report, has stated that the deceased was strangled while she was in a sitting position and strangulation was done by a soft cloth from behind.

7. Attention of this Court has been drawn towards the report of State Medico- Legal Cell, Lucknow, U.P., which is undated and is placed at Page No. 102 of the paper book, wherein the opinion of the doctor, who has conducted the postmortem report has been doubted and the cause of death of the deceased by strangulation was excluded, however, opinion of partial hanging was not denied.

8. Attention of this Court is also drawn towards the relevant part of the textbook of Modi's Medical Jurisprudence and Toxicology and an authenticated book titled as '*Review of Forensic Medicine and Toxicology*' written by Gautam Biswas in order to show that in case of strangulation injury to the muscles of the neck must come with fracture of 'larynx', trachea and also of 'hyoid bone' while the 'hyoid bone' of the deceased has been found in-tact. Various other submissions have been made in order to show that in all probability the death of the deceased may not be the result of strangulation.

9. It is next submitted that so far as the contusion measuring 6 cm. x 4 cm. has been found on left side of her head, just above the left ear, is concerned, the same may be the result of the fact that the deceased was taken to hospital in an ambulance and the same may be caused during the journey to the hospital and back.

10. It is further submitted that bonafide of the applicant was evident in conduct of the applicant in immediately informing the police by dialing

112 as well as to the father of the deceased and in this regard a report prepared by the Dial 112 placed at Page No. 59 of the paper book is highlighted in order to show that the police had arrived on 11.04.2022 at 7:16 am. and have also reported that deceased had died by committing suicide but in connivance with the informant the inquest report was not prepared and the same could only be prepared when the first information report of this case was lodged on 12.04.2022.

11. It is further submitted that there is no element of demand of dowry and committing cruelty in lieu thereof with the deceased, as the marriage of the deceased with the applicant was a 'love-marriage', which has also been fortified by the observation made by the investigating officer in the case diary, extract of which has been placed at Page No. 107 of the paper book and, thus, it was a 'love-marriage', there was no exchange of dowry or gifts and it is in this background despite opportunities given by the investigating officer to the informant, no documentary evidence has been produced with regard to either giving of dowry or doing any expenses in the marriage, while all the expenses of the marriage functions are stated to have been borne by the father of the applicant. In this regard various papers pertaining to the booking of a resort, band and of other expenses have been placed on record from Page Nos. 62 to 89 of the paper book.

12. It is also submitted that on the demand made by the applicant, the informant had given a 'four wheeler' is absolutely false, concocted and could not be believed. In this regard, the 'Registration Certificate' of the vehicle bearing Registration No. U.P.32LL9027, which is in the name of the deceased has been highlighted in order to show that the same was taken on loan by the deceased, as she was a working lady.

13. It is next submitted that the deceased had died on 11.04.2022 and within nine days of her death on 20.04.2022 the complainant applied for compassionate job of his son, which has been rejected by the employer. Applicant is languishing in jail in this case since 13.04.2022 and he is not having any previous criminal history. Applicant has also made all attempts

to save the deceased and during her stay with the applicant she has never made any complaint pertaining to demand of dowry and commission of cruelty in lieu thereof and the same has been carved out subsequently by her family members.

14. Reliance has been placed by learned counsel for the applicant on the law laid down by the Hon'ble Supreme Court in '*Gurdeep Singh vs. State of Punjab and others*' reported in (2011)12 SCC 408.

15. Shri Rishikesh Verma, learned A.G.A. however, opposes the prayer of bail of the applicant on the ground that the applicant is the husband of the deceased and keeping in view the fact that he was more responsible for her welfare and is accused of committing heinous offence, he is not entitled to be released on bail.

16. Shri Abhishek Awasthi, learned counsel appearing for the complainant/informant vehemently submits that the report submitted by the State Medico Legal Cell, Lucknow, wherein a doubt has been shown with regard to the cause of death of the deceased by strangulation may not be conclusive. Elaborating further, it is submitted that it was on 12.12.2022 the charges against the applicant was framed and one of the charge in alternate was framed under Section 302 I.P.C. also and it was after the framing of charge under Section 302 I.P.C., a report from the State Medico Legal Cell has been submitted, which is of no-consequence.

17. It is further submitted that the statement of a reliable witness, namely, Dr. Akhilesh Kumar is significant in this case, who had witnessed the whole incident, who had stated that at the relevant point of time he was standing near the residence of the deceased and he heard an alarm raised by the applicant and on going upwards the house of applicant/deceased he found the deceased was lying on a bed and he had also given her C.P.R. and when she was taken to hospital, she was declared dead. It is highlighted that this witness has stated that the residents of the colony had also informed him that soon before the incident the applicant and

deceased along with their son were going towards their car and thereafter returned immediately to their house and after little time the applicant came down with his son but after going till the main gate of the C.D.R.I. colony, he immediately returned back and went upwards and raised an alarm. It is highlighted that the conduct of the applicant was highly suspicious. The statement of this witness was also highlighted in order to show that blood was also oozing from the nostrils of the deceased.

18. It is vehemently submitted that even if the defence of the applicant is excluded, in the postmortem report of the deceased, a contusion measuring 6 cm. x 4 cm. has been found on left side of head just above the left ear and the same has not been explained and had it been a case of suicide, this injury may not be inflicted during the course of transportation, as this injury has been found antemortem and not postmortem. Thus, in all probability the deceased has been done to death by the applicant and having regard to the presumption, as provided under Section 113-B of the Indian Evidence Act, the applicant is not entitled to be released on bail.

19. Having heard learned counsel for the parties and having perused the record, it is reflected that the deceased had died after three years of her marriage with the applicant. Submissions and counter submissions have been made in support and against the fact that the marriage of the applicant with the deceased was a 'love-marriage' and no dowry was given or exchanged and all the expenses of the marriage were borne by the father of the applicant. The informant as well as the other witnesses have categorically stated that the deceased was being subjected to cruelty in lieu of demand of dowry and as her death is otherwise than in normal circumstances, all the ingredients of Section 304-B I.P.C. are evident in this case.

20. It is also revealed that deceased was working in C.D.R.I., Lucknow. The two doctors who had conducted the postmortem on the body of the deceased have found that she was strangled from behind with a soft

cloth while she was in a sitting position. The applicant had relied on the report submitted by the State Medico Legal Cell, Lucknow Uttar Pradesh, wherein the death of the deceased due to strangulation has been doubted and is prima facie opined to have been caused due to partial hanging'.

21. Hon'ble Supreme Court in '**Ponusamy vs. State of Tamil Nadu**' reported in MANU/SC/7489/2008, has opined as under:-

"21. In Taylor's Principles and Practice of Medical Jurisprudence, Thirteenth Edition, pages 307-308, it is stated:

The hyoid bone is 'U' shaped and composed of five parts : the body, two greater and two lesser horns. It is relatively protected, lying at the root of the tongue where the body is difficult to feel. The greater horn, which can be felt more easily, lies behind the front part of the strip-muscles (sternomastoid), 3 cm below the angle of the lower jaw and 1.5 cm from the midline. The bone ossifies from six centres, a pair for the body and one for each horn. The greater horns are, in early life, connected to the body by cartilage but after middle life they are usually united by bone. The lesser horns are situated close to the junction of the greater horns in the body. They are connected to the body of the bone by fibrous tissue and occasionally to the greater horns by synovial joints which usually persist throughout life but occasionally become ankylosed.

Our own findings suggest that although the hardening of the bone is related to age there can be considerable variation and elderly people sometimes show only slight ossification.

From the above consideration of the anatomy it will be appreciated that while injuries to the body are unlikely, a grip high up on the neck may readily produce fractures of the greater horns. Sometimes it would appear that the local pressure from the thumb causes a fracture on one side only.

While the amount of force in manual strangulation would often appear to be greatly in excess of that required to cause death, the application of such force, as evidenced by extensive external and soft tissue injuries,

make it unusual to find fractures of the hyoid bone in a person under the age of 40 years.

As stated, even in older people in which ossification is incomplete, considerable violence may leave this bone intact. This view is confirmed by Green. He gives interesting figures : in 34 cases of manual strangulation the hyoid was fractured in 12 (35%) as compared with the classic paper of Gonzales who reported four fractures in 24 cases. The figures in strangulation by ligature show that the percentage of hyoid fractures was 13. Our own figures are similar to those of Green."

22. *In 'Journal of Forensic Sciences' Volume 41 under the Title - Fracture of the Hyoid Bone in Strangulation : Comparison of Fractured and Unfractured Hyoids from Victims of Strangulation, it is stated:*

The hyoid is the U-shaped bone of the neck that is fractured in one-third of all homicides by strangulation. On this basis, postmortem detection of hyoid fracture is relevant to the diagnosis of strangulation. However, since many cases lack a hyoid fracture, the absence of this finding does not exclude strangulation as a cause of death. The reasons why some hyoids fracture and others do not may relate to the nature and magnitude of force applied to the neck, age of the victim, nature of the instrument (ligature or hands) used to strangle, and intrinsic anatomic features of the hyoid bone. We compared the case profiles and xeroradiographic appearance of the hyoids of 20 victims of homicidal strangulation with and without hyoid fracture (n = 10, each). The fractured hyoids occurred in older victims of strangulation (39 ± 14 years) when compared to the victims with unfractured hyoids (30 ± 10 years). The age- dependency of hyoid fracture correlated with the degree of ossification or fusion of the hyoid synchondroses. The hyoid was fused in older victims of strangulation (41 ± 12 years) whereas the unfused hyoids were found in the younger victims (28 ± 10 years). In addition, the hyoid bone was ossified or fused in 70% of all fractured hyoids, but, only 30% of the unfractured hyoids were fused. The shape of the hyoid bone was also

found to differentiate fractured and unfractured hyoids. Fractured byoids were longer in the anterior-posterior plane and were more steeply sloping when compared with unfractured hyoids. These data indicate that hyoids of strangulation victims, with and without fracture, are distinguished by various indices of shape and rigidity. On this basis, it may be possible to explain why some victims of strangulation do not have fractured hyoid bones.

23. Mr. Rangaramanajam, however; relied upon Modi's 'Medical Jurisprudence and Toxicology', Twenty-Third Edition at page 584 wherein a difference between hanging and strangulation has been stated. Our attention in this connection has been drawn to point No. 12 which reads as under:

<i>Hanging</i>	<i>Strangulation</i>
<i>Fracture of the larynx and trachea- Very rare and that too in judicial hanging.</i>	<i>Fracture of the larynx and trachea- Often found also of hyoid bone.</i>

24. A bare perusal of the opinion of the learned Author by itself does not lead to the conclusion that fracture of hyoid bone, is a must in all the cases. ”

22. Hon'ble Supreme Court in '**Javed Abdul Rajjaq Shaikh vs. State of Maharashtra**' reported in **MANU/SC/1516/2019** has held as under:-

"22. The differences between hanging and strangulation have been highlighted by Modi on Medical Jurisprudence and Toxicology, 25th Edition, as follows:

<i>Hanging</i>		<i>Strangulation</i>	
1.	<i>Most suicidal.</i>	1.	<i>Mostly homicidal.</i>

2.	<i>Face—Usual pale and petechiae rare.</i>	2.	<i>Face—Congested, livid and marked with petechiae.</i>
3.	<i>Saliva—Dribbling out of mouth down on the chin and chest.</i>	3.	<i>Saliva—No such dribbling.</i>
4.	<i>Neck—Stretched and elongated in fresh bodies.</i>	4.	<i>Neck—Not so.</i>
5.	<i>External signs of asphyxia usually not well marked.</i>	5.	<i>External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect).</i>
6.	<i>Ligature mark—Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.</i>	6.	<i>Ligature mark—Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.</i>
7.	<i>Abrasions and ecchymoses round about the edges of the ligature mark, rare.</i>	7.	<i>Abrasions and ecchymoses round about the edges of the ligature mark, common.</i>
8.	<i>Subcutaneous tissues Under the mark—White, hard and glistening.</i>	8.	<i>Subcutaneous tissues under the mark—Ecchymosed.</i>
9.	<i>Injury to the muscles of neck—Rare.</i>	9.	<i>Injury to the muscles of the neck—Common.</i>
10.	<i>Carotid arteries, internal coats ruptured in</i>	10.	<i>Carotid arteries, internal coats ordinarily ruptured.</i>
11.	<i>Fracture of the larynx and trachea—Very rare and may be found that too in judicial hanging.</i>	11.	<i>Fracture of the larynx, trachea and hyoid bone.</i>
12.	<i>Fracture—dislocation of the cervical vertebrae—Common</i>	12.	<i>Fracture—dislocation of the cervical vertebrae—Rare.</i>

	<i>in judicial hanging.</i>		
13.	<i>Scratches, abrasions and bruises on the face, neck and other parts of the body—Usually not present.</i>	13.	<i>Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body—Usually present.</i>
14.	<i>No evidence of sexual assault.</i>	14.	<i>No evidence of sexual assault.</i>
15.	<i>Emphysematous bullae on surface of the lungs—Not present.</i>	15.	<i>Emphysematous bullae on the surface of the lungs — May be present.</i>

23. As to what is the distinction between strangulation and throttling is also dealt within the self-same work:

Definition-Strangulation is defined as the compression of the neck by a force other than hanging. Weight of the body has nothing to do with strangulation.

Ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body.

When constriction is produced by the pressure of the fingers and palms upon the throat, it is called as throttling. When strangulation is brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances, it is known as mugging (strangle hold).

A form of strangulation, known as Bansdola, is sometimes practised in northern India. In the form, a strong bamboo or lathi (wooden club) is placed across the throat and another across the back of the neck. These are strongly fastened t one end. A rope is passed round the other end, which is bound together, and the unfortunate victim is squeezed to death. The throat is also pressed by placing a lathi or bamboo across the front of the neck and standing with a foot on each of lathi or bamboo.

Garrotting is another method that was used by thugs around 1862 in India. A rope or a loincloth is suddenly thrown over the head and quickly tightened around neck. Due to sudden loss of consciousness, there is no struggle. The assailant is then able to tie the ligature.

26. Abrasion and Ecchymoses round about the edges of ligature mark is stated to be common in case of strangulation. Further P.W. 1 deposes that upper external injury No. 4, that is contusion, on upper lip noted in paragraph 17 is corresponding injury to teeth and tongue which is described in paragraph 21. He further states that these two injuries are probable for pressing mouth by hand.

27. Injury to the muscles of the neck is stated to be common in case of strangulation whereas in a case of hanging injury to the muscles of the neck is rare. In this connection it is to be noticed that in paragraph 20 of the post-mortem, it is stated that both sternomastoid muscle crushed and severe haemorrhage present beneath it. In this connection, it is relevant to understand what is sternomastoid muscle and where it is located. The Sternocleidomastoid muscle is also known as sternomastoid muscle. It is one of the largest and most superficial cervical muscle located in the superficial layer on the side of the neck. It has its origin from the middle portion of the clavical and the manubrium sternix. Manubrium sternix is upper most portion of the sternum bone. The post mortem finding in this case is to the effect that sternomashoid muscle is crushed and there is severe haemorrhage present beneath it. This feature is compatible with the case being one of strangulation as injury to the muscle of the neck is rare in hanging. Fracture - dislocation of the cervical vertebrae is common in judicial hanging whereas it is rare in the case of strangulation. The post-mortem result does not show that there is fracture or dislocation of cervical vertebrae. The cervical vertebrae are the vertebrae of the neck immediately below the skull. Neither in the post-mortem nor in the deposition of PW 1 is anything brought out to show that there is either fracture or dislocation of the cervical vertebrae. The

absence of the same also probablises clearly the case of prosecution that this is a case of strangulation or rather throttling.

28. It is no doubt true that in the case of hanging, fracture of the larynx and trachea is very rare and that too it may be found in judicial hanging. On the other hand, fracture on the larynx, trachea and hyoidbone indicates strangulation. P.W. 1 doctor states in cross examination thus say that it is true that the deceased had not faced fracture to the larynx, trachea or hyoidbone. P.W. 1 in the re-examination explains the absence of fracture to larynx, trachea and hynoidbone in the following terms:

In case of strangulation by hand fracture of that larynx and trachea is not necessary to be occurred and the distinction between hanging and strangulation and the general tendencies of hanging and strangulation are given."

23. The postmortem report of the deceased would sufficiently project that apart from a 'ligature mark' one contusion measuring 6 cm. x 4 cm. has also been found on left side of head of the deceased and the same has not been designated as postmortem injury, while the deceased appears to have died in the house of the applicant, as is evident from the statement of one witness Dr. Akhilesh Kumar, as the deceased has not responded to the C.P.R. given by Dr. Akhilesh Kumar. Blood has also been found oozing from the nostrils of the deceased, as has been noted by Dr. Akhilesh Kumar. The hyoid bone of the deceased is found intact and in view of the law referred herein-above, the same is not necessarily found to be fractured in all cases of strangulation. Primafacie, it appears that the report by the State Medico Legal Cell has been submitted after framing of charge against the applicant under Section 302 I.P.C.. Thus, in absence of the 'hyoid bone' fractured would not be any benefit to the applicant, as the same would be appreciated by the trial Court after all the evidence is produced before it. Demand of dowry and committing cruelty in lieu thereof have been alleged by all the prosecution witnesses whose statements have been recorded by the investigating officer. The deceased

was serving in Central Drug Research Institute (C.D.R.I.), Lucknow and apparently there appears no reason for her committing suicide and the reason, which has been cited is not appears to be justified at least at the stage of bail.

24. Thus, for all the reasons mentioned herein-above, I do not find any good ground to release the applicant on bail. In result, the bail application moved on behalf of the applicant- **Vishvendra Kumar Singh** is *rejected*.

25. The trial Court is, however, directed to proceed with the trial without granting unnecessary adjournments to the parties and make all out efforts to conclude the same within **one year from today**.

26. The trial Court shall now fix/list this case before it at least once in a week and on all such dates would ensure the presence of the prosecution witnesses.

27. The Joint Commissioner of Police, Lucknow would be personally responsible to produce the witnesses before the trial Court on each and every date of such listing.

28. A copy of this order be immediately sent to the trial Court through the Sessions Judge concerned as well as to the Commissioner of Police, Lucknow for strict compliance by the Senior Registrar of this Bench.

29. It is further provided that if the trial is not concluded within the period stipulated above, the applicant would be entitled to renew his prayer of bail again before this Court.

30. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression on the merits of the case.

Order Date :- 30.11.2023

Praveen